

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLAYTON ERNEST LONGACRE,

Plaintiff,

v.

KITSAP COUNTY,

Defendant.

CASE NO. C17-5900RBL

ORDER DENYING MOTION FOR
RECONSIDERATION

THIS MATTER is before the Court on Plaintiff Longacre's Motion for Reconsideration [Dkt. # 15] of the Court's Order [Dkt. #13] granting Defendant Kitsap County's Motion to Dismiss [Dkt. #6]. Longacre claims the Court erred (1) in considering and judicially noticing documents supplied with Defendants' Reply, and (2) in dismissing his case on issue preclusion grounds.

He claims he should have been permitted to respond if the Court considered matters outside the complaint. Generally, a Court may not consider any material outside the pleadings in ruling on a Rule 12 motion, or the motion is converted to one for summary judgment (and the opposing party is entitled to respond to the new motion). *See* Fed. R. Civ. P. 12 (b)(6) There are two exceptions to this rule. First, the Court may consider material submitted as part of the

1 complaint, or upon which the complaint necessarily relies, if the material's authenticity is not
2 contested. Second, under Fed. R. Evid. 201, the Court may take judicial notice of "matters of
3 public record." *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001).

4 The Court's reliance on matters of public record did not convert the motion to one for
5 summary judgment.

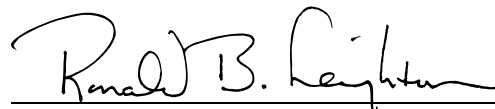
6 Longacre also disputes the preclusive effect of the prior case, which he lost. He claims
7 that he was required to prove there —by clear and convincing evidence—that service was
8 defective, but that he can prevail on this issue here by proving defective service by a
9 preponderance of the evidence.

10 This is not a distinction that makes a difference, and holding that it does makes no sense;
11 prevailing parties would regularly be subject to a second lawsuit seeking to undo the result of the
12 first.

13 The Motion for Reconsideration is DENIED.

14 IT IS SO ORDERED.

15 Dated this 2nd day of February, 2018.

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18 Ronald B. Leighton
19 United States District Judge
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